



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 200706-0177]**

**RIN 0648-BJ92**

**Pacific Halibut Fisheries; Catch Sharing Plan**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to revise regulations for the commercial individual fishing quota (IFQ) Pacific halibut (halibut) fisheries for the 2020 IFQ fishing year. This final rule removes limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps, in IFQ regulatory areas 4B (Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This final rule is necessary because immediate action is needed to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas due to travel restrictions and health mandates. This action is within the authority of the Secretary of Commerce to establish additional regulations governing the taking of halibut which are in addition to, and not in conflict with, those adopted by the International Pacific Halibut Commission (IPHC). This emergency rule is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982, and other applicable laws.

**DATES:** Effective [*INSERT DATE OF FILING FOR PUBLIC INSPECTION WITH THE OFFICE OF THE FEDERAL REGISTER*], through December 31, 2020.

**ADDRESSES:** Electronic copies of the Regulatory Impact Review (RIR), also referred to as the Analysis, prepared for this final rule are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Additional requests for information regarding halibut may be obtained by contacting the International Pacific Halibut Commission, 2320 W. Commodore Way, Suite 300, Seattle, WA 98199-1287; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802; Sustainable Fisheries Division.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, 907-586-7228<mailto:glenn.merrill@noaa.gov>.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for Action**

The IPHC and NMFS manage fishing for halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The 2020 IPHC annual management measures were implemented on March 13, 2020 (85 FR 14586). Subsequently, the IPHC recommended

limited revisions to the 2020 annual management measures. The Secretary of State, with the concurrence of the Secretary of Commerce, accepted these revised measures and published revised regulations on June 19, 2020 (85 FR 37023).

The Halibut Act, 16 U.S.C. 773c(a) and (b), provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. The Halibut Act, 16 U.S.C. 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations recommended by the Council may be implemented by NMFS only after approval by the Secretary.

The Council has exercised this authority in developing halibut management programs for the subsistence, sport, and commercial halibut fisheries. The Secretary exercised its authority to implement the commercial IFQ halibut fishery management program (58 FR 59375; November 9, 1993). The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679. The IFQ Program for the sablefish fishery is implemented by the Bering Sea and Aleutian Islands (BSAI) Fishery Management Plan (FMP) and Federal regulations at 50 CFR part 679 under the authority of section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act.

The halibut IFQ fishery is managed in specific areas defined by the IPHC. These IFQ regulatory areas (Areas) are: Area 2A (California, Oregon, and Washington); Area 2B (British Columbia); Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into five areas, 4A through

4E, in the Bering Sea and Aleutian Islands of Western Alaska). These Areas are described at 50 CFR part 679, Figure 15. NMFS also allocates halibut to the Western Alaska Community Development Quota (CDQ Program) in Areas 4B, 4C, 4D, and 4E (§ 679.31(a)(2)). Halibut is allocated to the CDQ Program in Areas 4B, 4C, 4D, and 4E and those allocations are not subject to a vessel use cap. Throughout this preamble, the term “vessel use cap” refers to regulations applicable to the halibut IFQ fishery.

### **Background**

This final rule implements regulations to remove vessel use caps in Areas 4B, 4C, and 4D. The IPHC has not recommended regulations to establish vessel use caps in Areas off Alaska (Areas 2C through 4). The existing vessel use caps were recommended by the Council and implemented by NMFS as part of the IFQ Program (58 FR 59375; November 9, 1993) as regulations that are in addition to, and not in conflict with, those adopted by the IPHC, consistent with the Halibut Act (16 U.S.C. 773c(c)).

The following sections describe the IFQ Program, halibut IFQ vessel use caps, the rationale and effects of temporarily removing vessel use caps in Areas 4B, 4C, and 4D, and the regulations implemented under this final rule.

### *IFQ Program*

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the CDQ Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to Section 2.3.1 of the Analysis.

Because this rule is specific to the halibut IFQ fishery, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding quota share (QS). Quota share is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of the annual commercial catch limit in the halibut fishery. In addition, QS is designated for specific geographic areas of harvest, a specific vessel operation type (catcher vessel (CV) or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category). Out of the four vessel categories of halibut QS category A shares are designated for catcher/processors, include vessels that process their catch at sea (*i.e.*, freezer longline vessels), and do not have a vessel length designation whereas, Category B, C, and D shares are designated to be fished on CVs that meet specific length designations (§ 679.40(a)(5)).

NMFS annually issues IFQ permits to each QS holder. An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in an Area from a specific operation type and vessel category. IFQ is expressed in pounds (lb) and is based on the amount of QS held in relation to the total QS pool for each Area with an assigned catch.

The IFQ Program established: 1) limits on the maximum amount of QS that a person could use (*i.e.*, be used to receive annual IFQ) (§ 679.42(f)); 2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (§ 679.42(g)); 3) limits on the ability of IFQ assigned to one CV vessel category

(*i.e.*, vessel category B, C, or D IFQ) to be fished on a different (*i.e.*, larger) vessel category with some limited exceptions (§ 679.42(a)(2)); and 4) limits on the maximum amount of halibut IFQ that may be harvested by a vessel during an IFQ fishing year (§ 679.42(h)). All of these limitations were established to retain the owner-operator nature of the CV halibut IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels. In addition, the IFQ Program includes transfer restrictions to retain the owner-operator nature of the CV halibut IFQ fisheries. Only qualified individuals and initial recipients of QS are eligible to hold CV QS and they are required to be on the vessel when the IFQ is being fished, with a few limited exceptions (§ 679.41(h)(2)).

On June 25, 2020, NMFS published an emergency rule to modify the temporary transfer provision of the IFQ Program for the commercial halibut and sablefish fisheries for the 2020 IFQ fishing year (85 FR 38100). That emergency rule allows QS holders to transfer IFQ to otherwise eligible recipients. This transfer flexibility promotes the complete and efficient harvest of the IFQ fisheries. Furthermore, the rule temporarily alleviates unforeseen economic and social consequences stemming from recent restrictions on the IFQ fisheries that are detailed in the rule's preamble (85 FR 38100). That emergency rule does not modify other provisions of the IFQ Program. That emergency rule facilitates the transfer of IFQ to fishery participants and allows additional harvest opportunities, but it does not relieve any vessel use caps that may constrain fishing operations.

*Halibut IFQ Vessel Use Caps*

The IFQ Program established vessel use caps to limit the maximum amount of halibut that could be harvested on any one vessel to help ensure that a diversity of vessels were engaged in the halibut fishery, to prevent the possibility of the IFQ fishery being conducted from a small number of vessels, and to address concerns about the socio-economic impacts of consolidation under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130; December 3, 1992).

This final rule refers to halibut catch limits, commercial halibut allocations, and vessel use caps in net pounds or net metric tons. Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. This terminology is used in this final rule to be consistent with the IPHC, which establishes catch limits and calculates mortality in net pounds.

Relevant to this final rule, regulations at § 679.42(h)(1) state that “No vessel may be used, during any fishing year, to harvest more IFQ halibut than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E”. Applying this regulation to 2020, yields a vessel use cap of 80,396 lbs (36.5 mt). This vessel use cap applies to vessels harvesting IFQ halibut in Areas 4B, 4C and 4D.

In addition, regulations at § 679.42(h)(1)(ii) state that “No vessel may be used, during any fishing year, to harvest more than 50,000 lb (22.7 mt) of IFQ halibut derived from QS held by a CQE.” Compared to the § 679.42(h)(1) vessel use cap, § 679.42(h)(1)(ii) imposes an even more restrictive vessel use cap to vessels that are

harvesting IFQ halibut derived from QS held by a community quota entity (CQE). A CQE is a NMFS-approved non-profit organization that represents a small, remote, coastal communities that meet specific criteria to purchase and hold CV halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. Relevant to this final rule, a CQE is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870; February 14, 2014). Any vessel harvesting halibut IFQ derived from the QS held by the Adak CQE is subject to this more restrictive 50,000 lb (22.7 mt) vessel use cap.

*Rationale and Effects of Temporarily Removing Vessel Use Caps in Areas 4B, 4C, and 4D*

On May 15, 2020, the Council held a special meeting to consider, among other things, requests from IFQ fishery stakeholders to remove vessel use caps applicable to the halibut and sablefish IFQ fisheries. These requests, and the May 15, 2020 special meeting of the Council were prompted by challenges posed by travel restrictions and health mandates (See Sections 1 and 2.3 of the Analysis).

The Council recommended, and NMFS issues this final rule after considering a range of factors. These factors include, but are not limited to:

- The unforeseen complications that government-issued travel restrictions and health mandates imposed on fishing operations in the 2020 fishing year, particularly in the remote BSAI halibut IFQ fishery. These restrictions and mandates may restrict the ability for vessels and crew to operate and fully harvest their IFQ (Sections 2.3 and 2.5 of the Analysis);



- The relatively large proportion of vessels participating in the Area 4B, 4C, and 4D halibut IFQ fishery that are operating near the current vessel use cap, thereby limiting the amount of “headroom” available to accommodate additional IFQ if it is transferred to persons eligible to harvest IFQ on vessels operating in those Areas (Section 2.3 of the Analysis);
- The minimum number of vessels required to fully harvest the IFQ held by the affected CQE exceeds the number of vessels owned by residents of the community (Sections 2.3.8 and 2.5 of the Analysis);
- Reduced ex-vessel prices due to poor market conditions that may further limit the number of vessels that can economically harvest their halibut IFQ in Areas 4B, 4C, and 4D (Sections 2.3 and 2.3.9 of the Analysis);
- Local quarantine or other health measures at specific remote ports in Areas 4B, 4C, or 4D (*e.g.*, Saint Paul, Alaska located in Area 4C) that may further limit the ability of smaller vessels to operate because processing facilities and vessel services are not available (Section 2.3 of the Analysis).

The reader is referred to the Analysis, particularly Sections 2.3 and 2.5, for additional detail on the range of factors considered and the anticipated effects of removing the vessel use caps in Areas 4B, 4C, and 4D for both CQE-associated vessels and non-CQE-associated vessels.

After reviewing these factors, the Council recommended “emergency action” to remove vessel use caps for the halibut IFQ fishery in Areas 4B, 4C, and 4D. Although

the Council recommended emergency action, NMFS is implementing the Council's recommendation with this final rule because there is no specific emergency action authority in the Halibut Act.

The Council did not recommend, and this final rule does not include, measures to relieve the vessel use caps for the sablefish IFQ fishery, or for other halibut Areas due to the larger number of vessels that are currently active in the sablefish IFQ fishery and these other halibut Areas, and information indicating that halibut harvests in these other Areas would not be constrained under the current vessel use caps (Section 2.3.5 of the Analysis).

The Council and NMFS also considered the potential impacts on halibut conservation and management if vessel use caps vessels in Areas 4B, 4C, and 4D are relieved for the 2020 IFQ fishing year. This final rule removes vessel use caps in specific Areas (Areas 4B, 4C, and 4D) because the vessel use caps may restrict the harvest of halibut in these Areas, and less restrictive management measures are needed immediately to ensure the more complete harvest of the halibut resource during the 2020 IFQ fishing year. This final rule is responsive to the unforeseen circumstances in the fishery in 2020 and does not modify the vessel use cap provisions in future years consistent with the Council's goals in implementing vessel use caps in this fishery. This final rule would not modify other elements of the IFQ Program. This final rule would not increase or otherwise modify the 2020 halibut catch limits adopted by the IPHC and implemented by NMFS (85 FR 14586, March 13, 2020). This final rule would not modify any other conservation measure recommended by the IPHC and adopted by NMFS, nor any other

conservation measure implemented by NMFS independent of the IPHC. This final rule would not modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

#### *Regulations Implemented Under This Final Rule*

After considering the best available information, the Convention, the status of the halibut resource, and the potential social and economic costs of the maintaining the vessel use cap limits described in this preamble, this final rule adds a new provision at 50 CFR 679.41(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4B, 4C, and 4D during the 2020 IFQ fishing year. This final rule applies to vessels harvesting IFQ halibut for the CQE in Area 4B as well as other vessels harvesting IFQ halibut in Area 4B, 4C, and 4D.

#### **Classification**

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The final action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters in and off Alaska.

This final rule is consistent with the objective of the Convention to develop the stocks of halibut of the Northern Pacific Ocean and Bering Sea to levels that will permit the optimum yield from that fishery, and to maintain the stocks at those levels. The Council and NMFS considered the best available information for the management measures implemented by this final rule.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. Without adoption of this final rule, the halibut catch limits in Areas 4B, 4C and 4D may not be fully harvested based on the best available information. Further, it is imperative to publish these regulations as soon as possible during the 2020 IFQ fishing year to allow for the greatest opportunity for IFQ holders to coordinate with vessel operators to ensure that the halibut IFQ allocations in Areas 4B, 4C, and 4D are fully harvested. Because of the timing of the 2020 halibut IFQ fishery, which began on March 14, 2020, and ends on November 15, 2020, it is impracticable to complete rulemaking during the 2020 halibut fishery with a public review and comment period. This final rule implements provisions to remove vessel use caps in Areas 4B, 4C, and 4D consistent with the recommendations made by the Council at its special meeting that concluded on May 15, 2020. NMFS must ensure that the prosecution of a fishery would not result in substantial harm to the halibut resource that could occur if the additional time necessary to provide for prior notice and comment and agency processing delayed the effectiveness of this action beyond its publication in the **Federal Register**.

There also is good cause under 5 U.S.C. 553(d)(3) to make the rule effective immediately upon filing with the Office of the Federal Register. These management measures must be effective upon the final rule's publication in the **Federal Register** because the 2020 halibut IFQ fishery was opened on March 14, 2020, and closes on November 15, 2020. Similar to the reasoning of waiving prior notice and comment, a longer effective period maximizes these measures' beneficial economic effects and reduces harm to the fishery resource. Conversely, a 30-day cooling off period will shorten and reduce these measure's economic and fishery resource benefits because the benefits are only realized during the remainder of the 2020 fishing year. These management measures are necessary to prevent substantial harm to the halibut resource. Accordingly, it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule. Therefore, good cause exists to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), and to make the rule effective upon filing with the Office of the Federal Register.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553(b)(B), or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

## List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 6, 2020.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447;

Pub. L. 111-281.

2. In 679.42, add paragraph (h)(1)(iii) to read as follows:

#### **§679.42 Limitations on use of QS and IFQ.**

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory areas 4B, 4C, and 4D during the 2020 IFQ fishing year.

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[FR Doc. 2020-14831 Filed: 7/8/2020 8:45 am; Publication Date: 7/9/2020]